

1 HB684  
2 67491-5  
3 By Representative Vance  
4 RFD: State Government  
5 First Read: 30-MAR-04

**ACT No. 2004- 440**



ENROLLED, An Act,

Adding Article 2A to Chapter 12 of Title 35 of the Code of Alabama 1975, providing for the Uniform Disposition of Unclaimed Property Act, concerning the receipt and disposition by the State Treasurer of various unclaimed property, specifying the allocation of proceeds derived, and specifying certain penalties and enforcement; and repealing Article 2, Sections 35-12-20 to 35-12-51, inclusive, of Chapter 12 of Title 35 of the Code of Alabama 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Article 2, comprised of Sections 35-12-20 to 35-12-51, inclusive, of Chapter 12, Title 35, Code of Alabama 1975, is repealed and the following new Article 2A is added to Chapter 12 of Title 35, Code of Alabama 1975, to read as follows:

Article 2A. Uniform Disposition of Unclaimed Property Act of 2004.

§35-12-70. Short title. This article may be cited as the Uniform Dispositions of Unclaimed Property Act of 2004.

§35-12-71. Definitions.

As used in this article, unless the context otherwise requires, the following terms shall have the meanings respectively ascribed to them by this section:

(1) APPARENT OWNER. A person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(2) BUSINESS ASSOCIATION. A corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(3) DOMICILE. The state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(4) FINANCIAL ORGANIZATION. A savings and loan association, building and loan association, industrial loan organization, credit union, cooperative bank, bank, or banking organization.

(5) HOLDER. A person in possession of property belonging to another, or who is a trustee in case of a trust, obligated to hold for the account of, or deliver to, or pay to, the owner or apparent owner as applicable, property that is subject to this article.

(6) INSURANCE COMPANY. An association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life

1 endowments, annuities, or insurance, including, but not  
2 limited to, accidental, burial, casualty, credit life,  
3 contract performance, dental, disability, fidelity, fire,  
4 health, hospitalization, illness, life, malpractice, marine,  
5 mortgage, surety, wage protection, and workers' compensation  
6 insurance.

7 (7) MINERAL. Gas; oil; coal; other gaseous, liquid,  
8 and solid hydrocarbons; oil shale; cement material; sand and  
9 gravel; road material; building stone; chemical raw material;  
10 gemstone; fissionable and nonfissionable ores; colloidal and  
11 other clay; steam and other geothermal resource; or any other  
12 substance defined as a mineral by the law of this state.

13 (8) MINERAL PROCEEDS. Amounts payable for the  
14 extraction, production, or sale of minerals, or, upon the  
15 abandonment of those payments, all payments that become  
16 payable thereafter. The term includes amounts payable:

17 a. For the acquisition and retention of a mineral  
18 lease, including bonuses, royalties, compensatory royalties,  
19 shut-in royalties, minimum royalties, and delay rentals.

20 b. For the extraction, production, or sale of  
21 minerals, including net revenue interests, royalties,  
22 overriding royalties, extraction payments, and production  
23 payments.

1           c. Under an agreement or option, including a joint  
2     operating agreement, unit agreement, pooling agreement, and  
3     farm-out agreement.

4           (9) OWNER. A person who has a legal or equitable  
5     interest in property subject to this article or the person's  
6     legal representative. The term includes a depositor in the  
7     case of a deposit, a beneficiary in the case of a trust other  
8     than a deposit in trust, and a creditor, claimant, or payee in  
9     the case of other property.

10          (10) PERSON. An individual, business association,  
11     financial organization, estate, trust, government,  
12     governmental subdivision, agency, or instrumentality, or any  
13     other legal or commercial entity.

14          (11) PROPERTY. Tangible property held in a safe  
15     deposit box or other safekeeping depository in this state, and  
16     fixed and certain interest in intangible property that is  
17     held, issued, or owed in the course of a holder's business, or  
18     by a government, governmental subdivision, agency, or  
19     instrumentality, and all income or increments therefrom. The  
20     term includes, but is not limited to, property that is  
21     referred to as or evidenced by any of the following:

22           a. Money, a check, draft, deposit, interest, or  
23     dividend.

24           b. Credit balance, customer's overpayment, gift  
25     certificate, security deposit, refund, credit memorandum,

1 unpaid wage, unused ticket, mineral proceeds, or unidentified  
2 remittance.

3 c. Stock or other evidence of ownership of an  
4 interest in a business association or financial organization.

5 d. A bond, debenture, note, or other evidence of  
6 indebtedness.

7 e. Money deposited to redeem stocks, bonds, coupons,  
8 or other securities or to make distributions.

9 f. An amount due and payable under the terms of an  
10 annuity or insurance policy, including, but not limited to,  
11 policies providing life insurance, property and casualty  
12 insurance, workers' compensation insurance, or health and  
13 disability insurance.

14 g. An amount distributable from a trust or custodial  
15 fund established under a plan to provide health, welfare,  
16 pension, vacation, severance, retirement, death, stock  
17 purchase, profit sharing, employee savings, supplemental  
18 unemployment insurance, or similar benefits.

19 (12) RECORD. Information that is inscribed on a  
20 tangible medium or that is stored in an electronic or other  
21 medium and is retrievable in perceivable form.

22 (13) RULES. Rules necessary to carry out this  
23 article adopted pursuant to the Administrative Procedure Act.

24 (14) STATE. A state of the United States, the  
25 District of Columbia, the Commonwealth of Puerto Rico, the

United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(15) TREASURER. The Treasurer of the State of Alabama, or the designee of the Treasurer.

(16) UTILITY. Any person who owns or operates, for public use, any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

§35-12-72. Presumption of Abandonment.

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's checks, 15 years after issuance.

(2) Money order, five years after issuance.

(3) A demand, savings, or time deposit including a deposit that is automatically renewable, three years after the earlier of maturity or the date of the last indication by the apparent owner of interest in the property, but a deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the apparent owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder, or the apparent owner has indicated an interest in the deposit.

1           (4) Tangible and intangible property held in a safe  
2     deposit box or other safekeeping depository in this state in  
3     the ordinary course of the holder's business and proceeds  
4     resulting from the sale of the property permitted by other  
5     law, three years after expiration of the lease or rental  
6     period on the box or other depository.

7           (5) Money or credits owed to a customer as a result  
8     of a retail business transaction, ~~three~~ one years after the  
9     obligation accrued.

10          (6) Property in an individual retirement account,  
11     defined benefit plan, or other account or plan that is  
12     qualified for tax deferral under the income tax laws of the  
13     United States, three years after the earlier of a. the date of  
14     the distribution or attempted distribution of the property; b.  
15     the date of the required distribution as stated in the plan or  
16     trust agreement governing the plan; or c. the date, if  
17     determinable by the holder, specified in the income tax laws  
18     of the United States by which distribution of the property  
19     must begin in order to avoid a tax penalty.

20          (7) Stock or other equity interest in a business  
21     association or financial organization, including a security  
22     entitlement under Article 8 of Title 7, the Uniform Commercial  
23     Code, three years after the earlier of a. the date of the most  
24     recent dividend, stock split, or other distribution unclaimed  
25     by the apparent owner; or b. the date of the second mailing of



1 a statement of account or other notification or communication  
2 that was returned as undeliverable or after the holder  
3 discontinued mailings, notifications, or communications to the  
4 apparent owner.

5 (8) Debt of a business association or financial  
6 organization, other than a bearer bond or an original issue  
7 discount bond covered under subdivision (18), three years  
8 after the date of the most recent interest payment unclaimed  
9 by the apparent owner.

10 (9) Property distributable by a business association  
11 or financial organization in a course of dissolution, one year  
12 after the property becomes distributable.

13 (10) Amount owed by an insurer on a life or  
14 endowment insurance policy or an annuity that has matured or  
15 terminated, three years after the obligation to pay arose or,  
16 in the case of a policy or annuity payable upon proof of  
17 death, three years after the insured has attained, or would  
18 have attained if living, the limiting age under the mortality  
19 table on which the reserve is based.

20 (11) Property distributable in the course of a  
21 demutualization or related reorganization of an insurance  
22 company shall be deemed abandoned as follows:

23 a. Any funds, two years after the date of the  
24 demutualization or reorganization, if the funds remain  
25 unclaimed, and the owner has not otherwise communicated with

1 the holder or its agent regarding the property as evidenced by  
2 a memorandum or other record on file with the holder or its  
3 agent.

4 b. Any stock or other equity interest, two years  
5 after the date of the demutualization or reorganization if  
6 instruments or statements reflecting the distribution are  
7 either mailed to the owner and returned by the post office as  
8 undeliverable, or not mailed to the owner because of an  
9 address on the books and records of the holder that is known  
10 to be incorrect and the owner has not otherwise communicated  
11 with the holder or its agent regarding the property as  
12 evidenced by a memorandum or other record on file with the  
13 holder or its agent.

14 c. Property not subject to paragraphs a. or b.  
15 within two years of the distribution shall remain reportable  
16 under other sections of this chapter.

17 (12) Property received by a court as proceeds of a  
18 class action, and not distributed pursuant to the judgment,  
19 one year after the distribution date.

20 (13) Property held by a court, government,  
21 governmental subdivision, agency, or instrumentality, one year  
22 after the property becomes distributable.

23 (14) Wages or other compensation for personal  
24 services, one year after the compensation becomes payable.

1           (15) Deposit or refund owed to a subscriber by a  
2 utility, one year after the deposit or refund becomes payable.

3           (16) Any check or warrant drawn on the State of  
4 Alabama Treasury, outstanding and unpaid one year from the  
5 date of issue.

6           (17) Gift certificate, other than those exempt under  
7 Section 35-12-73, three years after June 30 of the year in  
8 which the certificate was sold, but if redeemable in  
9 merchandise only, the amount abandoned is deemed to be 60  
10 percent of the certificate's face value.

11           (18) All other property, three years after the  
12 owner's right to demand the property or after the obligation  
13 to pay or distribute the property arises, whichever first  
14 occurs.

15           (b) At the time that an interest is presumed  
16 abandoned under subsection (a), any other property right  
17 accrued or accruing to the owner as a result of the interest,  
18 and not previously presumed abandoned, is also presumed  
19 abandoned.

20           (c) Property is unclaimed if, for the applicable  
21 period set forth in subsection (a), the apparent owner has not  
22 communicated in writing, or by other means reflected in a  
23 contemporaneous record prepared by or on behalf of the holder,  
24 with the holder concerning the property or the account in  
25 which the property is held, and has not otherwise indicated an

1 interest in the property. A communication with an owner by a  
2 person other than the holder or its representative who has not  
3 in writing identified the property to the owner is not an  
4 indication of interest in the property by the owner.

5 (d) An indication of an owner's or apparent owner's  
6 interest in property includes any of the following:

7 (1) The presentment of a check or other instrument  
8 of payment of a dividend or other distribution made with  
9 respect to an account or underlying stock or other interest in  
10 a business association or financial organization or, in the  
11 case of a distribution made by electronic or similar means,  
12 evidence that the distribution has been received.

13 (2) Owner-directed activity in the account in which  
14 the property is held, including a direction by the owner to  
15 increase, decrease, or change the amount or type of property  
16 held in the account.

17 (3) The making of a deposit to or withdrawal from a  
18 bank account. Any correspondence in writing from the holder to  
19 the apparent owner, such as the mailing of a statement, report  
20 of interest paid or credited, renewal of a deposit or other  
21 written information relating to the deposit shall be construed  
22 to mean that the apparent owner has indicated an interest in  
23 the deposit if the correspondence in writing is not returned  
24 to the holder for nondelivery thereof. Any activity or  
25 indication of interest by an apparent owner in the deposit or

1 in any other deposits in a holder shall be construed to be  
2 activity and indication of interest in all other deposits of  
3 the apparent owner in the holder.

4 (4) The payment of a premium with respect to a  
5 property interest in an insurance policy; but the application  
6 of an automatic premium loan provision or other nonforfeiture  
7 provision contained in an insurance policy does not prevent a  
8 policy from maturing or terminating if the insured has died or  
9 the insured or the beneficiary of the policy has otherwise  
10 become entitled to the proceeds before the depletion of the  
11 cash surrender value of a policy by the application of those  
12 provisions.

13 (e) Property is payable or distributable for  
14 purposes of this article notwithstanding the failure of the  
15 owner or apparent owner to make demand or present an  
16 instrument or document otherwise required to obtain payment.

17 §35-12-73. Exemptions.

18 (a) The following entities are exempt from reporting  
19 property under this article:

20 (1) Electric cooperatives organized under Chapters 6  
21 and 7 of Title 37.

22 (2) Incorporated municipalities and incorporated  
23 municipal boards and county and county boards of this state.

24 (b) The following property is exempt from reporting  
25 under this article:

1           (1) A gift certificate, gift card, or in-store  
2 merchandise credit issued or maintained by any person engaged  
3 primarily in the business of selling tangible personal  
4 property at retail.

5           (2) Property held, due, and owing in a foreign  
6 country and arising out of a foreign transaction.

7           §35-12-74. Rules For Taking Custody.

8           Except as otherwise provided in this article, or by  
9 other statute of this state, property that is presumed  
10 abandoned, whether located in this or another state, is  
11 subject to the custody of this state if any of the following  
12 occur:

13           (1) The last known address of the apparent owner, as  
14 shown on the records of the holder, is in this state.

15           (2) The records of the holder do not reflect the  
16 identity of the person entitled to the property and it is  
17 established that the last known address of the person entitled  
18 to the property is in this state.

19           (3) The records of the holder do not reflect the  
20 last known address of the apparent owner and it is established  
21 that:

22           a. The last known address of the person entitled to  
23 the property is in this state; or

24           b. The holder is domiciled in this state or is a  
25 government or governmental subdivision, agency, or

1 instrumentality of this state and has not previously paid or  
2 delivered the property to the state of the last known address  
3 of the apparent owner or other person entitled to the  
4 property.

5 (4) The last known address of the apparent owner, as  
6 shown on the records of the holder, is in a state that does  
7 not provide for the escheat or custodial taking of the  
8 property and the holder is domiciled in this state or is a  
9 government or governmental subdivision, agency, or  
10 instrumentality of this state.

11 (5) The last known address of the apparent owner, as  
12 shown on the records of the holder, is in a foreign country  
13 and the holder is domiciled in this state or is a government  
14 or governmental subdivision, agency, or instrumentality of  
15 this state.

16 (6) The transaction out of which the property arose  
17 occurred in this state, the holder is domiciled in a state  
18 that does not provide for the escheat or custodial taking of  
19 the property, and the last known address of the apparent owner  
20 or other person entitled to the property is unknown or is in a  
21 state that does not provide for the escheat or custodial  
22 taking of the property.

23 (7) The property is a traveler's check or money  
24 order purchased in this state, or the issuer of the traveler's  
25 check or money order has its principal place of business in

1       this state and the issuer's records show that the instrument  
2       was purchased in a state that does not provide for the escheat  
3       or custodial taking of the property, or do not show the state  
4       in which the instrument was purchased.

5               §35-12-75. Dormancy Charges.

6               (a) Any person engaged primarily in the business of  
7       selling tangible personal property at retail, by contract with  
8       the customer may, charge, and deduct from the property  
9       otherwise subject to this article, a reasonable administrative  
10      and restocking fee of not more than twenty-five dollars (\$25)  
11      with respect to items purchased under a layaway or similar  
12      agreement the terms of which are not fulfilled by the customer  
13      and the items are returned to inventory.

14              (b) A holder may deduct from property presumed  
15      abandoned a charge imposed by reason of the apparent owner's  
16      failure to claim the property within a specified time only if  
17      there is a valid and enforceable written contract between the  
18      holder and the apparent owner under which the holder may  
19      impose the charge and the holder regularly imposes the charge.  
20      The amount of the deduction is limited to an amount that is  
21      not unconscionable.

22              §35-12-76. Report of Abandoned Property.

23              (a) A holder of property presumed abandoned shall  
24      make a report to the Treasurer concerning the property. The



1 report must be verified and must contain, at a minimum, all of  
2 the following:

3 (1) A description of the property.

4 (2) The date, if any, on which the property became  
5 payable, demandable, or returnable, and the date of the last  
6 transaction with the apparent owner with respect to the  
7 property.

8 (3) Other information that the Treasurer by rule  
9 prescribes as necessary for the administration of this  
10 article.

11 (4) Except with respect to a traveler's check, money  
12 order, or State of Alabama issued warrants, the name, if  
13 known, the last known address, if any, and the Social Security  
14 number or taxpayer identification number, if readily  
15 ascertainable, of the apparent owner of property of the value  
16 of fifty dollars (\$50) or more.

17 (5) In the case of property held or owing under an  
18 annuity or a life or endowment insurance policy, the policy  
19 number, the full name, Social Security number, if known, date  
20 of birth, if known, and last known address, of the annuitant  
21 or insured and of the beneficiary.

22 (6) In the case of expired State of Alabama issued  
23 warrants, the full name of the owner/payee, warrant number,  
24 date of issuance, owner address, and Social Security number,  
25 if known.

1           (7) In the case of property held in a safe deposit  
2 box or other safekeeping depository, an indication of the  
3 place where it was held, the full name and last known address  
4 of the apparent owner, and any amounts owing to the holder.

5           ~~In addition the holder of property must have~~  
6 ~~prepared for each safety deposit box or depository a record~~  
7 ~~with a name and address of a contact person other than the~~  
8 ~~owner, if the owner chooses to name such a person, in case of~~  
9 ~~death or abandonment of the box or depository.~~

10           (8) In the case of individual items valued under  
11 fifty dollars (\$50), an aggregated amount.

12           (b) If a holder of property presumed abandoned is a  
13 successor to another person who previously held the property  
14 for the apparent owner or the holder has changed its name  
15 while holding the property, the holder shall file with the  
16 report its former names, if any, and the known names and  
17 addresses of all previous holders of the property.

18           (c) The report shall be filed before November 1 of  
19 each year and cover the 12 months next preceding July 1 of  
20 that year.

21           (d) The holder of property presumed abandoned shall  
22 send written notice to the apparent owner, not more than 120  
23 days or less than 60 days before filing the report, stating  
24 that the holder is in possession of property subject to this  
25 article, if all of the following requirements are met:

1           (1) The holder has in its records an address for the  
2     apparent owner which the holder's records do not disclose to  
3     be inaccurate.

4           (2) The claim of the apparent owner is not barred by  
5     a statute of limitations.

6           (3) The value of the property is fifty dollars (\$50)  
7     or more.

8           (e) State of Alabama issued warrants outstanding and  
9     unpaid one year after issuance are void and transferred to the  
10    Unclaimed Property Reserve Fund pursuant to Section 41-4-60.  
11    Therefore, subsection (d) does not apply.

12          (f) Before the date for filing the report, the  
13    holder of property presumed abandoned may request the  
14    Treasurer to extend the time for filing the report. The  
15    Treasurer may grant the extension for good cause. The holder,  
16    upon receipt of the extension, may make an interim payment on  
17    the amount the holder estimates will ultimately be due, which  
18    terminates the accrual of penalties on the amount paid.

19          §35-12-77. Payment or Delivery of Abandoned  
20    Property.

21          (a) Except for property held in a safe deposit box  
22    or other safekeeping depository, upon filing the report  
23    required in Section 35-12-76, the holder of property presumed  
24    abandoned shall pay, deliver, or cause to be paid or delivered  
25    to the Treasurer the property described in the report as

1 unclaimed, but if the property is an automatically renewable  
2 deposit, and a penalty or forfeiture in the payment of  
3 interest would result, the time for compliance is extended  
4 until a penalty or forfeiture would no longer result.

5 (b) Tangible property held in a safe deposit box or  
6 other safekeeping depository shall be delivered to the  
7 Treasurer within 120 days after filing the report required in  
8 Section 35-12-76.

9 (c) If the property reported to the Treasurer is a  
10 security or security entitlement under Article 8 of Title 7,  
11 the Uniform Commercial Code, the Treasurer is an appropriate  
12 person to make an indorsement, instruction, or entitlement  
13 order on behalf of the apparent owner to invoke the duty of  
14 the issuer or its transfer agent or the securities  
15 intermediary to transfer or dispose of the security or the  
16 security entitlement in accordance with Article 8 of Title 7,  
17 the Uniform Commercial Code.

18 (d) If the holder of property reported to the  
19 Treasurer is the issuer of a certificated security, the  
20 Treasurer has the right to obtain a replacement certificate  
21 pursuant to Section 7-8-405 of the Uniform Commercial Code,  
22 but an indemnity bond is not required.

23 (e) An issuer, the holder, and any transfer agent or  
24 other person acting pursuant to the instructions of and on  
25 behalf of the issuer or holder in accordance with this section

1 is not liable to the apparent owner and must be indemnified  
2 against claims of any person in accordance with Section  
3 35-12-79.

4 (f) remittance to the state shall occur annually on  
5 or before November 1 of each year and shall accompany the  
6 report provided for in Section 35-12-76(c) and shall cover the  
7 same time period as the report.

8 §35-12-78. Notification of Abandoned Property.

9 (a) It is specifically recognized that the state has  
10 an obligation to make an effort to notify apparent owners of  
11 abandoned property in a cost-effective manner.

12 (b) The Treasurer shall make at least one active  
13 attempt to notify apparent owners of the existence of  
14 abandoned property held by the Office of the Treasurer. Within  
15 12 months of the receipt of the property, the Treasurer shall  
16 mail a postcard notification to the apparent owner containing  
17 all of the following information set forth in the report filed  
18 by the holder:

19 (1) The name of each person appearing to be the  
20 owner of the property.

21 (2) The last known address or location of each  
22 person appearing to be the owner of the property.

23 (3) A statement explaining that the property of the  
24 apparent owner is presumed to be abandoned and has been  
25 delivered into the protective custody of the Treasurer.

1           (4) A statement that information about the property  
2 and its return to the owner is available to a person having a  
3 legal or beneficial interest in the property, upon written  
4 request to the Treasurer.

5           (c) The Treasurer is not required to attempt to  
6 notify apparent owners of property having a total value less  
7 than fifty dollars (\$50), or concerning a traveler's check,  
8 money order, or similar instrument that has no reported name  
9 or address.

10           §35-12-79. Custody By State; Recovery By Holder;  
11 Defense of Holder.

12           (a) In this article, "good faith" means honesty in  
13 fact in the conduct or transaction concerned.

14           (b) Upon payment or delivery of property to the  
15 Treasurer, the state assumes custody and responsibility for  
16 the safekeeping of the property. A holder who pays or delivers  
17 property to the Treasurer in good faith is relieved of all  
18 liability arising thereafter with respect to the property. The  
19 payment or delivery of property to the Treasurer shall operate  
20 as a full, absolute and unconditional release and discharge of  
21 the holder from any and all claims or demands of or liability  
22 to any person entitled thereto, or to any other claimant or  
23 state, and the payment or delivery may be pleaded as an  
24 absolute bar to any action brought against the holder by any  
25 other person entitled thereto, or by any other claimant or

1 state. The holder shall immediately and thereafter be relieved  
2 of and held harmless by the State of Alabama from any and all  
3 liabilities for any claim or claims which exist at the time  
4 with reference to the property or which may thereafter be made  
5 or may come into existence on account of or in respect to any  
6 such property. This section does not relieve the holder from  
7 any fine or civil penalty imposed pursuant to Section  
8 35-12-92.

9 (c) A holder who has paid money to the Treasurer  
10 pursuant to this article may but is not required to  
11 subsequently make payment to a person reasonably appearing to  
12 the holder to be entitled to payment. Upon a filing by the  
13 holder of proof of payment and proof that the payee was  
14 entitled to the payment, the Treasurer shall promptly  
15 reimburse the holder, unless the Treasurer already has paid a  
16 claim for the property, for the payment without imposing a fee  
17 or other charge. If reimbursement is sought for a payment made  
18 on a negotiable instrument, including a traveler's check or  
19 money order, the holder shall be reimbursed upon filing proof  
20 that the instrument was duly presented and that payment was  
21 made to a person who reasonably appeared to be entitled to  
22 payment.

23 The holder must be reimbursed for payment made even  
24 if the payment was made to a person whose claim was barred  
25 under Section 35-12-88.

1           (d) A holder who has delivered property other than  
2 money to the Treasurer pursuant to this article may reclaim  
3 the property if it is still in the possession of the  
4 Treasurer, without paying any fee or other charge, upon filing  
5 proof that the apparent owner has claimed the property from  
6 the holder.

7           (e) The Treasurer may accept a holder's affidavit as  
8 sufficient proof of the holder's right to recover money and  
9 property under this section.

10           (f) If a holder pays or delivers property to the  
11 Treasurer in good faith and thereafter another person claims  
12 the property from the holder or another state claims the  
13 property under its laws relating to escheat or abandoned or  
14 unclaimed property, the holder is relieved of and held  
15 harmless against any and all liabilities on the claim  
16 resulting from payment or delivery of the property to the  
17 Treasurer.

18           (g) Property removed from a safe deposit box or  
19 other safekeeping depository is received by the Treasurer  
20 subject to the holder's right to be reimbursed for the cost of  
21 the opening. The Treasurer shall reimburse the holder out of  
22 the proceeds remaining after deducting the expense incurred by  
23 the Treasurer in selling the property.

24           (h) A record of the issuance of a check, draft, or  
25 similar negotiable instrument is prima facie evidence of an



1 obligation. In claiming property from a holder who is also the  
2 issuer, the Treasurer's burden of proof as to the existence  
3 and amount of the property and its abandonment is satisfied by  
4 showing issuance of the instrument and passage of the  
5 requisite period of abandonment. Defenses of payment,  
6 satisfaction, discharge, want of consideration, statute of  
7 limitations, and other similar defenses are affirmative  
8 defenses that must be established by the holder.

9 §35-12-80. Public Sale of Abandoned Property.

10 (a) Except as otherwise provided in this section,  
11 the Treasurer, within three years after the receipt of  
12 abandoned property, shall sell it to the highest bidder at  
13 public sale. The Treasurer may decline the highest bid and  
14 reoffer the property for sale if the Treasurer considers the  
15 bid to be insufficient. The Treasurer need not offer the  
16 property for sale, if the Treasurer considers that the  
17 probable cost of sale will exceed the proceeds of the sale. A  
18 sale held under this section shall be preceded by a single  
19 publication of notice, at least three weeks before sale, in a  
20 newspaper of general circulation in the county in which the  
21 property is to be sold.

22 (b) Securities listed on an established stock  
23 exchange must be sold at prices prevailing on the exchange at  
24 the time of sale. Other securities may be sold over the  
25 counter at prices prevailing at the time of sale or by any

1 reasonable method selected by the Treasurer. All securities  
2 delivered to the Treasurer may be sold upon receipt.

3 (c) Any person making a claim pursuant to this  
4 section is entitled to receive either the property delivered  
5 by the holder, if it still remains in custody of the  
6 Treasurer, or the proceeds received from sale, less any fees  
7 and expenses incurred from the sale if deducted. No person has  
8 any claim under this article against the state, the Treasurer,  
9 the holder, any transfer agent, any auctioneer, or any person  
10 acting for or on behalf of the holder or Treasurer for any  
11 appreciation or depreciation in the value of property  
12 occurring after delivery by the holder to the Treasurer.

13 (d) A purchaser of property at a sale conducted by  
14 the Treasurer pursuant to this article takes the property free  
15 of all claims of the owner or previous holder and of all  
16 persons claiming through or under them. The Treasurer shall  
17 execute all documents necessary to complete the transfer of  
18 ownership.

19 §35-12-81. Deposit of Funds.

20 (a) The Treasurer shall promptly deposit in the  
21 Unclaimed Property Reserve Fund, created within the Treasury,  
22 all funds received under this article, including but not  
23 limited to, the proceeds from the sale of abandoned property  
24 under Section 35-12-80, from which the Treasurer shall pay  
25 claims duly allowed and shall transfer funds to the Unclaimed

1       Property Administrative Fund. The Treasurer shall record the  
2       name and last known address of each person appearing from the  
3       holder's reports to be entitled to the property, and the name  
4       and last known address of each insured person or annuitant and  
5       beneficiary and with respect to each policy or annuity listed  
6       in the report of an insurance company, its number, the name of  
7       the company, and the amount due.

8               (b) All costs and expenses of administering the  
9       program under this article shall be paid from the Unclaimed  
10      Property Administrative Fund, created within the Treasury. On  
11      a quarterly basis, the Treasurer shall transfer from the  
12      Unclaimed Property Reserve Fund to the Unclaimed Property  
13      Administrative Fund an amount sufficient to meet all  
14      administrative costs and expenses of the program.

15             (c) On a quarterly basis, the Treasurer shall  
16      deposit in the State General Fund any surplus monies remaining  
17      in the Unclaimed Property Reserve Fund, after the requirements  
18      of this section have been met.

19             §35-12-82. Claim of Another State to Recover  
20      Property.

21             (a) After property has been paid or delivered to the  
22      Treasurer under this article, another state may recover the  
23      property if any of the following apply:

24               (1) The property was paid or delivered to the  
25      custody of this state because the records of the holder did

1 not reflect a last known location of the apparent owner within  
2 the borders of the other state and the other state establishes  
3 that the apparent owner or other person entitled to the  
4 property was last known to be located within the borders of  
5 that state and under the laws of that state the property has  
6 escheated or become subject to a claim of abandonment by that  
7 state.

8 (2) The property was paid or delivered to the  
9 custody of this state because the laws of the other state did  
10 not provide for the escheat or custodial taking of the  
11 property, and under the laws of that state subsequently  
12 enacted the property has escheated or become subject to a  
13 claim of abandonment by that state.

14 (3) The records of the holder were erroneous in that  
15 they did not accurately identify the owner of the property and  
16 the last known location of the owner within the borders of  
17 another state and under the laws of that state the property  
18 has escheated or become subject to a claim of abandonment by  
19 that state.

20 (4) The property was subjected to custody by this  
21 state under subdivision (6) of Section 35-12-74, and under the  
22 laws of the state of domicile of the holder the property has  
23 escheated or become subject to a claim of abandonment by that  
24 state.

1           (5) The property is a sum payable on a traveler's  
2 check, money order, or similar instrument that was purchased  
3 in the other state and delivered into the custody of this  
4 state under subdivision (7) of Section 35-12-74, and under the  
5 laws of the other state the property has escheated or become  
6 subject to a claim of abandonment by that state.

7           (b) A claim of another state to recover escheated or  
8 abandoned property must be presented in a form prescribed by  
9 the Treasurer, who shall decide the claim within 120 days  
10 after it is presented. The Treasurer shall allow the claim  
11 upon determining that the other state is entitled to the  
12 abandoned property under subsection (a).

13           (c) The Treasurer shall require another state,  
14 before recovering property under this section, to agree to  
15 indemnify this state and its officers and employees against  
16 any liability on a claim to the property.

17           §35-12-83. Filing and Handling of Claims.

18           (a) A person, excluding another state, claiming  
19 property paid or delivered to the Treasurer may file a claim  
20 on a form prescribed by the Treasurer and verified by the  
21 claimant.

22           (b) Within 120 days after a claim is filed, the  
23 Treasurer shall allow or deny the claim and give written  
24 notice of the decision to the claimant. If the claim is  
25 denied, the Treasurer shall inform the claimant of the reasons

1 for the denial and specify what additional evidence is  
2 required before the claim will be allowed. The claimant may  
3 then file a new claim with the Treasurer or maintain an action  
4 under Section 35-12-85.

5 (c) Within 30 days after a claim is allowed, the  
6 property or the net proceeds of a sale of the property must be  
7 delivered or paid by the Treasurer to the claimant. When  
8 property is paid or delivered to the Treasurer under this  
9 article, the owner is not entitled to receive interest,  
10 thereafter; however, the owner is entitled to receive  
11 dividends and other increments accruing thereafter.

12 (d) The Treasurer is not civilly or criminally  
13 liable for any property or funds distributed pursuant to this  
14 article, provided such distribution is made in good faith.

15 §35-12-84. Filing of a Claim—Intestate and Small  
16 Claims.

17 (a) The surviving spouse, the child or children of  
18 an abandoned property owner who has died intestate may claim  
19 the abandoned property under this section, and will have a  
20 defeasible right to the property, if all of the following  
21 conditions exist:

22 (1) The aggregate value of the abandoned property  
23 held on behalf of the owner must not exceed the amount allowed  
24 in Section 43-2-692.

1           (2) The claim need not be accompanied by an order of  
2 a probate court if the claimant files documentation  
3 established in the rules, including but not limited to, a. a  
4 written confirmation by the probate court that no estate has  
5 been opened or filed; b. an affidavit, signed by all  
6 beneficiaries (defined as spouse and children) stating that  
7 all beneficiaries have amicably agreed among themselves upon a  
8 division of the property; c. supporting documentation showing  
9 heir rights; and d. authorization to release the name and  
10 address of the claimant to subsequent claimants.

11           (b) Nothing in this section shall be construed to  
12 remove the jurisdiction of the probate court in matters of  
13 estates.

14           (c) A person may claim abandoned property in his or  
15 her name under this section and will have a defeasible right  
16 to the property, if all of the following conditions exist:

17           1. The aggregate amount value of the abandoned  
18 property held on behalf of the owner is equal to or less than  
19 two hundred dollars (\$200).

20           2. The claim is accompanied by an affidavit swearing  
21 to the authenticity of a claim and lack of matching  
22 documentation, and authorization to release the name and  
23 address of the claimant to subsequent claimants.

24           (d) Any person to whom payment, delivery, transfer,  
25 or issuance is made under this section shall be answerable and

1 accountable therefore to any heir of the decedent, to any  
2 person having a superior right to the decedent's property, or  
3 to the surviving spouse or minor children of the decedent who  
4 shall proceed against such person. This liability shall only  
5 be to the extent of the value of the property received by each  
6 person under this section.

7 (e) Any person who was lawfully entitled to share in  
8 the property but did not receive his or her share of the  
9 property, may enforce his or her rights in appropriate legal  
10 proceedings against those who received the property.

11 §35-12-85. Action To Establish A Claim.

12 A person aggrieved by a decision of the Treasurer or  
13 whose claim has not been acted upon within 120 days after its  
14 filing may maintain an original action to establish the claim  
15 in the Circuit Court of Montgomery County, Alabama, naming the  
16 Treasurer as a defendant. In any proceeding for determination  
17 of a claim to property under this article, the burden shall be  
18 upon the claimant to establish entitlement to the property by  
19 a preponderance of evidence. The proceeding shall be brought  
20 by the claimant within 90 days after the decision of the  
21 Treasurer.

22 §35-12-86. Election to Take Payment or Delivery.

23 (a) The Treasurer may decline to receive property  
24 reported under this article which the Treasurer considers to  
25 have a value less than the expenses of notice and sale.



1           (b) A holder, with the written consent of the  
2     Treasurer and upon conditions and terms prescribed by the  
3     Treasurer, may report and deliver property before the property  
4     is presumed abandoned. A holder exempt from reporting, upon  
5     conditions and terms prescribed by the Treasurer, may  
6     voluntarily report. Property so delivered must be held by the  
7     Treasurer and is not presumed abandoned until it otherwise  
8     would be presumed abandoned under this article.

9           §35-12-87. Disposition of Property Having No  
10    Substantial Commercial Value.

11           If the Treasurer determines after investigation that  
12    property delivered under this article has no substantial  
13    commercial value, the Treasurer may destroy or otherwise  
14    dispose of the property at any time. An action or proceeding  
15    may not be maintained against the state, the Treasurer, or the  
16    holder for or on account of an act of the Treasurer under this  
17    section, except for intentional misconduct of malfeasance.

18           §35-12-88. Periods of Limitation.

19           (a) The expiration, before or after the effective  
20    date of this article, of a period of limitation on the owner's  
21    right to receive or recover property, whether specified by  
22    contract, statute, or court order, does not preclude the  
23    property from being presumed abandoned or affect a duty to  
24    file a report or to pay or deliver or transfer property to the  
25    Treasurer as required by this article.

1           (b) An action or proceeding may not be maintained by  
2 the Treasurer to enforce this article in regard to the  
3 reporting, delivery, or payment of property more than 10 years  
4 after the holder specifically identified the property in a  
5 report filed with the Treasurer or gave express notice to the  
6 Treasurer of a dispute regarding the property. In the absence  
7 of such a report or other express notice, the period of  
8 limitation is tolled. The period of limitation is also tolled  
9 by the filing of a report that is fraudulent.

10           §35-12-89. Request for Reports and Examination of  
11 Records.

12           (a) The Treasurer may require a person who has not  
13 filed a report, or a person who the Treasurer believes has  
14 filed an inaccurate, incomplete, or false report, to file a  
15 verified report in a form specified by the Treasurer. The  
16 report must state whether the person is holding property  
17 reportable under this article, describe property not  
18 previously reported or as to which the Treasurer has made  
19 inquiry, and specifically identify and state the amounts of  
20 property that may be in issue.

21           (b) The Treasurer, at reasonable times and upon  
22 reasonable notice, may examine the records of any person to  
23 determine whether the person has complied with this article.  
24 The Treasurer may conduct the examination even if the person  
25 believes it is not in possession of any property that shall be

1 reported, paid, or delivered under this article. The Treasurer  
2 may contract with any other person to conduct the examination  
3 on behalf of the Treasurer.

4 (c) The Treasurer, at reasonable times, may examine  
5 the records of an agent, including a dividend disbursing agent  
6 or transfer agent, of a business association or financial  
7 association that is the holder of property presumed abandoned  
8 if the Treasurer has given the notice required by subsection  
9 (b) to both the association or organization and the agent at  
10 least 90 days before the examination.

11 (d) Documents and working papers obtained or  
12 compiled by the Treasurer, or the agents, employees, or  
13 designated representatives of the Treasurer, in the course of  
14 conducting an examination are confidential and are not public  
15 records, but the documents and papers may be:

16 (1) Used by the Treasurer in the course of an action  
17 to collect unclaimed property or otherwise enforce this  
18 article.

19 (2) Used in joint examinations conducted with or  
20 pursuant to an agreement with another state, the federal  
21 government, or any other governmental subdivision, agency, or  
22 instrumentality.

23 (3) Produced pursuant to subpoena or court order.

24 (4) Disclosed to the abandoned property office of  
25 another state for that state's use in circumstances equivalent

1 to those described in this subsection, if the other state is  
2 bound to keep the documents and papers confidential.

3 (e) If an examination of the records of a person  
4 results in the disclosure of property reportable under this  
5 article, the Treasurer may assess the cost of the examination  
6 against the holder in the amount of expenses incurred, but the  
7 assessment may not exceed the value of the property found to  
8 be reportable. The cost of an examination made pursuant to  
9 subsection (c) may be assessed only against the business  
10 association or financial organization.

11 (f) If, after the effective date of this article, a  
12 holder does not maintain records required by Section 35-12-90,  
13 and the records of the holder available for periods subject to  
14 this article are insufficient to permit the preparation of a  
15 report, the Treasurer may require the holder to report and pay  
16 to the Treasurer the amount the holder and Treasurer  
17 reasonably estimates, on the basis of any available records of  
18 the holder or by any other reasonable method of estimation,  
19 should have been but was not reported.

20 §35-12-90. Retention of Records.

21 (a) Except as otherwise provided in subsection (b),  
22 a holder required to file a report under Section 35-12-76  
23 shall maintain the records containing the information required  
24 to be included in the report for 10 years after the holder

1 files the report, unless a shorter period is provided by rule  
2 of the Treasurer.

3 (b) A business association or financial organization  
4 that sells, issues, or provides to others for sale or issue in  
5 this state, traveler's checks, money orders, or similar  
6 instruments other than third-party bank checks, on which the  
7 business association or financial organization is directly  
8 liable, shall maintain a record of the instruments while they  
9 remain outstanding, indicating the state and date of issue,  
10 for three years after the holder files the report.

11 §35-12-91. Interstate Agreements.

12 (a) The Treasurer may enter into an agreement with  
13 another state to exchange information relating to abandoned  
14 property or its possible existence. The agreement may permit  
15 the other state, or another person acting on behalf of a  
16 state, to examine records as authorized in Section 35-12-89.  
17 The Treasurer, by rule, may require the reporting of  
18 information needed to enable compliance with an agreement made  
19 under this section and prescribe the form.

20 (b) The Treasurer may join with another state to  
21 seek enforcement of this article against any person who is or  
22 may be holding property reportable under this article.

23 (c) At the request of another state, the Attorney  
24 General of this state may maintain an action on behalf of the  
25 other state to enforce, in this state, the unclaimed property

1 laws of the other state against a holder of property subject  
2 to escheat or a claim of abandonment by the other state, if  
3 the other state has agreed to pay expenses incurred by the  
4 Attorney General in maintaining the action.

5 (d) The Attorney General of this state may request  
6 the attorney general of another state or another attorney  
7 commence an action in the other state on behalf of the  
8 Treasurer. With the approval of the Attorney General of this  
9 state, the Treasurer may retain any other attorney to commence  
10 an action in this state on behalf of the Treasurer. This state  
11 shall pay all expenses, including attorney's fees, in  
12 maintaining an action under this subsection. With the  
13 Treasurer's approval, the expenses and attorney's fees may be  
14 paid from money received under this article. Any expenses or  
15 attorney's fees paid under this subsection may not be deducted  
16 from the amount that is subject to the claim by the owner  
17 under this article.

18 §35-12-92. Penalties and Enforcement.

19 (a) A holder who fails to report, pay, or deliver  
20 property within the time prescribed by this article, or fails  
21 to perform other duties imposed by this article, shall pay to  
22 the Treasurer for credit to the General Fund a civil penalty  
23 of one hundred dollars (\$100) for each business day the  
24 report, payment, or delivery is withheld, or the duty is not  
25 performed, up to a maximum of five thousand dollars (\$5,000).

(b) A holder who willfully fails to report, pay, or deliver property within the time prescribed by this article, or willfully fails to perform other duties imposed by this article, shall pay to the Treasurer for credit to the General Fund a civil penalty of five hundred dollars (\$500) for each business day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars (\$25,000).

(c) A holder who makes an intentional fraudulent report shall pay to the Treasurer for credit to the General Fund a civil penalty of one thousand dollars (\$1,000) for each business day from the date a report under this article was due, up to a maximum of twenty-five thousand dollars (\$25,000).

(d) The Treasurer for good cause may waive, in whole or part, penalties under subsections (a) and (b); and shall waive penalties if the holder acted in good faith.

(e) The Attorney General may maintain an action in this or another state to enforce this article.

#### §35-12-93. Agreement To Locate Property.

(a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and

1 extending to a time that is 24 months after the date the  
2 property is paid or delivered to the Treasurer. This  
3 subsection does not apply to an owner's agreement with an  
4 attorney to file a claim as to identified property or contest  
5 the Treasurer's denial of a claim.

6 (b) An agreement by an owner, the primary purpose of  
7 which is to locate, deliver, recover, or assist in the  
8 recovery of property is enforceable only if the agreement is  
9 in writing, clearly sets forth the nature of the property and  
10 the services to be rendered, is signed by the apparent owner,  
11 and states the value of the property before and after the fee  
12 or other compensation has been deducted.

13 (c) If an agreement covered by this section applies  
14 to mineral proceeds and the agreement contains a provision to  
15 pay compensation that includes a portion of the underlying  
16 minerals or any mineral proceeds not then presumed abandoned,  
17 the provision is void and unenforceable.

18 (d) An agreement covered by this section which  
19 provides for compensation that is unconscionable is  
20 unenforceable except by the owner. An owner who has agreed to  
21 pay compensation that is unconscionable, may maintain an  
22 action to reduce the compensation to a conscionable amount.  
23 The court may award reasonable attorney's fees to an owner who  
24 prevails in the action.



1           (e) This section does not preclude an owner from  
2     asserting that an agreement covered by this section is invalid  
3     on grounds other than unconscionable compensation. It is the  
4     sole responsibility of the owner to enforce this section.

5           §35-12-94. Confidentiality; Staff.

6           (a) Certain information contained in a holder's  
7     report to the Treasurer under this article, such as Social  
8     Security numbers, policy numbers, tangible property  
9     descriptions, and property dollar amounts, is not considered a  
10    public writing, but is confidential and exempt from the  
11    provisions of Section 36-12-40, and not subject to  
12    dissemination to anyone other than the Treasurer and the  
13    property owner. Except as expressly authorized by the  
14    Treasurer, it shall be unlawful for any person to print,  
15    publish, or divulge any information regarding property subject  
16    to this article.

17           (b) The Treasurer, pursuant to the Alabama  
18    Administrative Procedure Act, may adopt rules necessary to  
19    carry out this article.

20           (c) The Treasurer may employ the staff necessary to  
21    carry out the duties conferred upon the Treasurer pursuant to  
22    this article. The salaries for these persons shall be fixed  
23    according to the Merit System. The Treasurer may employ one  
24    individual outside the classified Merit System service.

1 Salaries shall be paid from the Unclaimed Property  
2 Administrative Fund.

3 §35-12-95. Transitional Provisions.

4 (a) An initial report filed under this article for  
5 property that was not required to be reported before the  
6 effective date of this article but which is subject to this  
7 article must include all items of property that would have  
8 been presumed abandoned during the 10-year period next  
9 preceding the effective date of this article as if this  
10 article had been in effect during that period.

11 (b) This article does not relieve a holder of a duty  
12 that arose before the effective date of this article to  
13 report, pay, or deliver property. Except as otherwise provided  
14 in subsection (b) of Section 35-12-88, a holder who did not  
15 comply with the law in effect before the effective date of the  
16 act which added this sentence is subject to the applicable  
17 provisions for enforcement and penalties which then existed,  
18 which are continued in effect for the purpose of this section.

19 §35-12-96. Uniformity of Application and  
20 Construction.

21 This article shall be applied and construed to  
22 effectuate its general purpose to make uniform the law with  
23 respect to the subject of this article among states enacting  
24 it.

1           Section 2. All laws or parts of laws which conflict  
2 with this act are repealed, and Article 2, consisting of  
3 Sections 35-12-20 to 35-12-51, inclusive, of Chapter 12, Title  
4 35, Code of Alabama 1975, is specifically repealed.

5           Section 3. This act shall become effective  
6 immediately following its passage and approval by the  
7 Governor, or its otherwise becoming law.

*[Signature]*

Speaker of the House of Representatives

*[Signature]*

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 29-APR-04, as amended.

Greg Pappas  
Clerk

Senate

06-MAY-04

Amended and Passed

House

06-MAY-04

Concurred in Sen-  
ate Amendment

APPROVED 5-12-04  
TIME 2:30 PM  
*[Signature]*  
GOVERNOR

Alabama Secretary Of State

Act Num....: 2004-440  
Bill Num....: H-684

Recv'd 05/12/04 03:26pmHNB